

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

RICHARD NAPIER

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Criminal No. 1:05 CR 256

AGREED STATEMENT OF FACTS

The United States and the defendant, Richard Napier, ("Napier") agree that had this matter proceeded to trial, the United States would have proven all of the following facts beyond a reasonable doubt:

Napier, a Connecticut resident, was employed as a Senior Vice-President at General Re Corporation ("Gen Re") in Stamford, Connecticut. Gen Re was a subsidiary of Berkshire Hathaway, Inc. ("Berkshire"), a publicly traded company. Cologne Re was a subsidiary of Gen Re, and Cologne Re Dublin ("CRD") was a subsidiary of Cologne Re. As such, CRD's financial results were consolidated with Berkshire's financial results. One of Gen Re's largest clients was American International Group, Inc. ("AIG"), a publicly traded insurance and financial services company. National Union Fire Insurance Company of Pittsburgh, Pennsylvania ("NUFIC") and Hartford Steam Boiler Inspection and Insurance Company ("HSB") were both wholly-owned member companies of AIG whose financial results were consolidated with AIG's financial results.

Between October 2000 and December 2001, Napier and others at Gen Re and AIG agreed to and did aid and abet AIG in reporting \$500 million of fraudulently inflated reserves and related entries in financial reports filed with the U.S. Securities and Exchange Commission ("SEC") and disseminated to investors throughout the world.

In late October 2000, Napier, who was one of the Gen Re executives responsible for Gen Re's relationship with AIG, was told by Gen Re's Chief Executive Officer ("CEO") that AIG's CEO had called Gen Re's CEO and asked if Gen Re could lend AIG up to \$500 million in reserves on a short-term basis through a loss portfolio transfer without transferring any real risk of loss to AIG. Napier was directed to help AIG complete this transaction and was told it would be best to complete the Gen Re side of the transaction outside of the United States. Napier was told by an AIG executive that AIG was seeking this transaction in response to criticism from stock market and insurance industry analysts after AIG had reduced reserves. Napier was also told that most of the CRD loss portfolios being considered for the proposed transaction were already reinsured and that losses in those portfolios should not exceed the amounts available to pay the associated claims. Thus, as Napier knew, CRD already accounted for those loss portfolios as deposits not as reinsurance reserves. Napier also knew that AIG wanted to account for those loss portfolios as reinsurance on which AIG had assumed risk and on which AIG could make or lose money (i.e., as reserves). Napier and others discussed how the Gen Re side of the transaction should be executed by a non-United States entity so that it would not be apparent that Gen Re had ceded (i.e., given) a large loss portfolio to AIG and that the counter-parties to the transaction were utilizing different accounting treatments. Napier and others were reminded

several times that the proposed transaction was highly confidential and they were instructed by Gen Re's CEO to "keep the circle of people involved in this as tight as possible."

Napier was directed and agreed to have Gen Re structure a transaction whereby AIG was able to book approximately \$500 million in reinsurance risk reserves without actually assuming any "real" risk. Napier and others knew that AIG could not properly report additional reserves from this transaction. Indeed, when asked, during a telephone call that included Napier, whether it would be problematic if anyone ever determined that CRD had accounted for the transaction differently from AIG, Gen Re's Chief Financial Officer responded: "we told AIG that there would not be symmetrical accounting here . . . we told them that was one of the aspects of the deal they had to digest."

The specific means employed by Napier and others to aid and abet AIG's fraudulent financial reporting included: (i) structuring a series of sham transactions which enabled AIG to report a total of \$500 million in phony reserves, in \$250 million increments, in periodic filings with the SEC during the fourth quarter of 2000 and the first quarter of 2001; (ii) creating false records that made it appear AIG was being paid \$10 million for assuming CRD's reinsurance risk when in reality AIG was not being paid but was paying Gen Re \$5 million for executing this sham transaction; and (iii) creating false records to make it appear that CRD had asked AIG to reinsure CRD's risk, when, in fact, AIG had asked Gen Re to participate in this transaction and AIG was not reinsuring any risk because there was no risk.

Napier and others knew that AIG would not assume any risk as a result of these transactions, but the contracts they utilized for the sham "reserve" transactions made it appear that AIG, through NUFIC, had assumed reinsurance risk because, under the terms of the

contracts, NUFIC was ceded (i.e., given) a total of \$500 million in premiums in exchange for reinsuring \$600 million in potential losses. The contracts also falsely provided that CRD would pay NUFIC a \$10 million loss transfer payment as part of the consideration for NUFIC reinsuring CRD's risk. However, the contracts purposefully omitted that AIG had secretly agreed to make Gen Re whole for that \$10 million loss transfer payment and also to pay Gen Re a separate \$5 million fee for participating in this scheme. The true payment terms were intentionally omitted from the transaction documents in order to mislead AIG's auditors, who might otherwise question why AIG would pay to assume another party's risk. In addition, Gen Re's CFO told Napier and others that AIG was going to honor the true payment terms and pay Gen Re by enriching a separate contract.

During a telephone call in early December 2000, Napier and others discussed whether AIG wanted an offer letter from CRD as part of a "paper trail" to make it appear that CRD had asked AIG to assume risk. Shortly after that call, Napier confirmed with an AIG executive that AIG wanted such a letter and he reviewed a draft of that letter before it was sent to AIG in mid-December, approximately six weeks after AIG's CEO asked Gen Re's CEO to complete this transaction. As Napier was aware, AIG, through NUFIC, and Gen Re, through CRD, implemented the first part of the reserve transaction in December 2000 so that AIG could report \$250 million in phony reserves during that year. Napier was also aware that AIG and Gen Re implemented the second part of the transaction so that AIG could book another \$250 million in phony reserves during the first quarter of 2001.

The two sham "reserve" contracts used for these transactions required CRD to pay AIG subsidiary NUFIC \$5 million per contract (\$10 million in total) as a loss transfer payment within

thirty days after each contract was executed. However, no money was exchanged until December, 2001. As Napier was aware, in order to appear to comply with the sham reserve contracts, but still disguise the secret payment terms, AIG did, in fact, enrich a separate contract with Gen Re. Specifically, AIG commuted – or terminated – a contract between Gen Re and another AIG company, called HSB, in such a way that Gen Re was left with an extra \$15.2 million. Thus, AIG secretly paid Gen Re the \$5 million fee (plus interest) and AIG secretly pre-funded the \$10 million payment from CRD back to AIG subsidiary NUFIC.

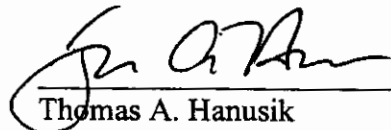
DATED: June 7, 2005

Respectfully submitted,

Paul J. McNulty  
United States Attorney

Joshua R. Hochberg  
Chief, Fraud Section, Criminal Division  
U.S. Department of Justice

By:



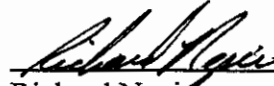
Thomas A. Hanusik  
Assistant Chief, Fraud Section

Michael S. Dry  
Assistant United States Attorney

Defendant's Stipulation and Signature

After consulting with my attorney and pursuant to the plea and cooperation agreement I entered into this day with the United States, I hereby stipulate that the above statement of facts is true and accurate. I further stipulate that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

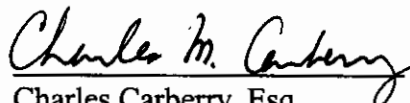
Date: June 7, 2005

  
Richard Napier  
Defendant

Defense Counsel's Signature

I am the attorney for defendant Richard Napier. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: 6/7/05

  
Charles Carberry, Esq.  
Counsel to the Defendant